



**PSA submission to the
Productivity Commission's**

Draft Inquiry Report

**Paid Parental Leave:
Support for Parents with
Newborn Children**

November 2008

ABOUT THE PSA

The Public Service Association and Professional Officers Association Amalgamated Union of New South Wales (PSA) is a trade union which represents New South Wales Government, New South Wales Universities and related private sector employees. We represent around 47,000 members, 58% of whom are female.

RESPONSE TO THE PRODUCTIVITY COMMISSION'S OBJECTIVES

The PSA welcomes the Commission's objectives as identified in the Overview of the Report and makes submissions in support of these objectives.

The PSA is concerned by recent statements by Treasurer; Wayne Swan that paid maternity leave *"might not be affordable next year due to the global financial turmoil."*¹

The PSA submits that a paid parental leave scheme is long overdue in Australia with Australia being one of the only two developed nations without a paid parental leave scheme and that a paid parental leave scheme is urgently required.

We also submit that a paid parental leave scheme will complement the governments current policy, in response to the global financial crisis; of stimulating the economy as the proposed scheme will encourage spending.

Most Australians of child bearing age are necessarily early in their career² and have not reached their full earning potential and simultaneously face multiple financial responsibilities including repayment of higher education debt, high mortgage repayments and rising living costs and consequently have small amounts of savings.³

New parents face additional costs around the time of birth of the child including loss of income where no industrially negotiated paid parental leave is available, increased health care costs and expenses associated with looking after a new born child including one off expenses such as prams and child seats and recurring expenditure for provisions including nappies and formula.

As such a paid parental leave scheme would deliver funds to Australians at a point in their life-cycle where they are most likely to spend the funds in the short term, stimulating the economy.

¹ AAP, "Maternity leave a priority but only if affordable: Swan", *The Age.Com.Au*, 5 October 2008, retrieved from www.theage.com.au/national/maternity-leave-a-priority-but-only-if-affordable-swan-20081005-4u4j.html on 19 November 2008

² ABS reports that the median age of all mothers of births registered in 2007 was 30.7 years, while the median age of all fathers was 33.1 years. Australian Bureau of Statistics 2008, *Births 2007*, Cat. no. 3301.0, ABS, Canberra. pg 6

³ See Australian Bureau of Statistics 2007, *Household Wealth and Wealth Distribution 2005-2006*, Cat. no. 6554.0, ABS, Canberra. pg 36 for a full analysis

RECOMMENDATION

THAT THE GOVERNMENT IMPLEMENT A PAID PARENTAL LEAVE SCHEME IN THE 2009 FEDERAL BUDGET.

Objective 1: the improved wellbeing of families, and in particular child and maternal health, associated with an extended period of absence from work around the birth of the baby and secure financial support during this period.

We concur with the Commission that *there is compelling evidence of child and maternal health and welfare benefits from a period of postnatal absence from work for the primary caregiver of around six months and a reasonable prospect that longer periods (of up to 9–12 months) are beneficial.*⁴

We note that it is the Commission's view that *the duration of a paid statutory scheme does not have to be equal to the period of absence [as] parents already use many options particularly access to privately negotiated paid maternity schemes and past accumulated leave – to fund a period of leave from work to care for their children.*⁵

Current industrial entitlements need to be protected to ensure that the proposed scheme has the desired effect to enable parents who can supplement the statutory scheme with other industrial entitlements to take at least 6 months of parental leave.

We make this submission as employers including Telstra, National Australia Bank, Commonwealth Bank and some independent schools in South Australia have already begun to indicate that they will not guarantee current entitlements to parental leave and that they will negotiate to reduce current entitlements through bargaining by absorbing the proposed government funded parental leave scheme into current arrangements.

Absorption of the proposed government scheme by employers through bargaining would be detrimental to workers as they currently receive industrially negotiated paid parental leave plus the Baby Bonus and are also eligible for Family Tax Benefit B. Were employers able to absorb the proposed scheme workers would be worse off by up to \$6,125.26 as they would no longer be eligible for the Baby Bonus (\$5,000) or Family Tax Benefit B (a maximum of \$125.02 per fortnight or \$1,625.26 per annum).

We note that it is the Commission's view that *most employers will keep their existing programs to ensure they remain 'employers of choice'*⁶ however recent Australian experience under Work Choices has been that employers will seek to reduce

⁴ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Overview xviii

⁵ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Overview xx

⁶ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, The Proposed Scheme 2.11

conditions if there is an inadequate legislative framework to protect employees conditions.⁷

We also submit that the global financial crisis with projections of reduced economic growth and increased unemployment may reduce employees bargaining power to maintain current conditions.

We concur with the Commissions view that *employers and employees [who] wish to restructure their employee benefits ...should be free to do so [and that it is] desirable given the intent of a statutory paid parental leave scheme - that any new package of employee benefits that employees and employers may privately renegotiate in the light of a statutory scheme...be at least as valuable to employees as their current packages.*

To ensure that that workers are at least as well off under the proposed scheme the PSA submits that the statutory scheme must contain a no-disadvantage clause which ensures that employers cannot reduce workers package of family friendly entitlements.

RECOMMENDATION

THAT THE PROPOSED PARENTAL LEAVE SCHEME SPECIFY THAT THE GOVERNMENT ENTITLEMENT IS IN ADDITION TO ANY CURRENT INDUSTRIAL ENTITLEMENTS.

THAT THE PROPOSED PARENTAL LEAVE SCHEME INCLUDE A NO DISADVANTAGE TEST TO PROTECT CURRENT INDUSTRIAL ENTITLEMENTS.

The PSA position is that all parents should have access to 28 weeks (including 2 weeks prior to the birth of the child) of paid parental leave and 4 weeks other parent leave to optimise child, maternal and family health and welfare.⁸

The majority of PSA members have access to at least 14 weeks of paid maternity leave and 1 week of paid other parent leave under the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 which complements the proposed parental leave scheme.

The PSA will try to achieve our aim of 28 weeks paid parental leave and 4 weeks other parent leave through bargaining for our members.

However as the Commission notes not all employees have access to industrially negotiated parental leave schemes with [only] *53% of female employees and 50% of male employees [currently having] access to employer provided paid parental leave*

⁷ Sutherland, Carolyn. *Agreement-making under Work Choices: The impact of the legal framework on bargaining practices and outcomes*, Monash University's Work and Employment Rights Research Centre, 2008

⁸ PSA, *Public Service Association of NSW Submission to Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave*, Sydney, June 2008

and that universal coverage of such schemes would be unlikely with growth in coverage of such schemes slowing recently.⁹

The Commission also notes that *Casual employees generally do not have paid leave*¹⁰ with Australian Bureau of Statistics data showing that 24.8% of all employees (excluding owner managers of incorporated enterprises) in 2007 having no paid leave entitlements.¹¹

As such, a large proportion of workers cannot complement the proposed government scheme with industrially negotiated parental leave schemes or other paid leave entitlements.

The PSA submits that to achieve improved wellbeing of families and in particular child and maternal health for all Australians including those without industrially negotiated parental leave schemes or other paid leave entitlements that the duration of the paid statutory scheme needs to be equal to the period of time (6 to 9 months) identified by the Commission as being the optimum period of absence from work by the primary care giver.

The PSA supports Unions NSW recommendation that 18 weeks paid parental leave be introduced in May 2009, 22 weeks in May 2011, 26 weeks in May 2012, and 28 weeks in May 2013.

RECOMMENDATION

THAT THE COMMISSION PHASE IN LONGER PERIODS OF PAID PARENTAL LEAVE TO ALLOW ALL AUSTRALIANS AN ADEQUATE PERIOD OF PRE AND POSTNATAL ABSENCE FROM WORK.

Objective 2: in the face of the incentives against work provided by the social welfare and tax system, encouragement of women of reproductive ages to maintain their lifetime attachment to the workforce

We welcome the Commission's objectives to encourage *women of reproductive ages to maintain their lifetime attachment to the workforce*.

We concur with the Commission that *'Existing incentives and the impacts of childbearing have marked impacts on female labour market involvement. Women:*

– experience much higher rates of part-time employment than men during the main Childbearing years

⁹ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Parental Leave in Australia Today 3.10

¹⁰ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Parental Leave in Australia Today 3.22

¹¹ Australian Bureau of Statistics 2008, 'Australian Social Trends', *table 1 Work, National Summary, 1997-2007*, Cat. No.4102.0, ABS, Canberra, July

- *have lower wages and accumulated superannuation balances. Forgone female earnings amount to an average of over \$300,000 in 2007 prices in a representative family with a single child*
- *with young children tend to work in jobs that have flexible work arrangements, but fewer opportunities for career development*¹²

It is the PSA's view that while paid parental leave will not resolve all gender inequity issues that it will have some positive effect in relation to women's lifetime attachment to the workforce and subsequently increase women's lifetime earnings and ability to finance their retirement.

Objective 3: the expression of emerging community norms that taking time away from the paid workforce to care for an infant is a normal part of life and work for many people, including fathers, and should be explicitly recognised.

The PSA concurs with the Commissions that a *government-mandated scheme would provide a signal that having a child and taking time out of the paid workforce for child rearing is viewed by the community as a normal part of work/family life and compatible with on going attachment to the workforce.*¹³

It is the PSA's view that for the scheme to be viewed as part of working life rather than a private matter that the scheme needs to have a stronger industrial underpinning for those in the workforce with a separate welfare stream for those out of the workforce.

For paid parental leave to be a normal part of working life it needs to be structured like any other leave arrangement and should be at full income replacement, attract normal superannuation contributions, be counted as service for the accrual of other industrial entitlements and have equivalent compliance and dispute resolution mechanisms.

All other forms of paid leave including recreation leave, sick leave and long service leave are paid at an employees full income, attract superannuation contributions and is counted as service. Quick and effective dispute resolution is also available in the state jurisdiction to deal with breaches, disputes of interpretation or cases of discrimination through the Industrial Relations Commission.

The PSA submits that the scheme needs to have compliance and dispute resolution mechanisms to effectively deal with breaches, disputes of interpretation or cases of discrimination arising as a result of the implementation of the scheme. We contend that this would most effectively be done through the industrial courts as it is a no cost jurisdiction that facilitates easy access to the lay person and has an emphasis on conciliation and maintaining an ongoing employment relationship.

¹² Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Labour Market Impacts 5.1

¹³ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Social and Cultural Issues 6.15

For parental leave to be viewed equivalently it needs to have an equal standing with other forms of leave.

It is important from a gender equity perspective that paid parental leave be treated like other forms of leave as paid parental leave will be predominantly accessed by women.

A scheme that does not treat parental leave equivalently with other forms of leave will send a strong signal that the work of parenting (currently predominantly women's work) is less valuable than other work.

Paid parental leave also needs to be at full wage replacement in recognition that women have the same financial responsibilities as men.

RECOMMENDATION

THAT THE PROPOSED PAID PARENTAL LEAVE SHOULD BE STRUCTURED AS AN INDUSTRIAL ENTITLEMENT FOR THOSE IN THE WORKFORCE.

THAT THE PROPOSED PARENTAL LEAVE SCHEME HAVE A COMPLIANCE AND DISPUTE RESOLUTION MECHANISM WITH ACCESS TO THE INDUSTRIAL RELATIONS COMMISSIONS FOR WORKERS.

RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT RECOMMENDATIONS

Draft Recommendation 2.1

The Australian Government should introduce a statutory paid parental leave scheme that provides:

- 1. paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages***
 - I. but with lower rates — to be set administratively — for juniors and others with hourly wages below the adult minimum***
- 2. payments to be taxed and included in income for assessment of any welfare benefits***
- 3. leave benefits for parents having twins or higher multiple births to be equal to those for parents bearing one child, supplemented by a payment equivalent to the new maternity allowance for each additional child (draft recommendation 2.6)***
- 4. superannuation entitlements calculated on the going wage of the employee or at the relevant capped amount, whichever is the smaller, but***
 - I. this would only be available for employees who (a) have met the Commission's eligibility criteria for paid parental leave under draft***

recommendation 2.4; (b) were entitled to employer superannuation contributions in their jobs before taking paid parental leave; and (c) were entitled to unpaid parental leave under the National Employment Standards

II. super contributions would be limited to the statutory 9 per cent rate

III. subject to its practical feasibility, including consideration of its compliance and administrative costs.

The PSA submits that the scheme must have universal coverage and provide the same parental leave conditions for all Australian workers regardless of whether they are in the state or federal industrial relations jurisdiction.

As such, the scheme must be implemented through Commonwealth legislation and not through the National Employment Standards (NES) as the NES does not cover workers in the state industrial relations jurisdiction.

While mirror legislation could be introduced in the state jurisdictions to mirror the NES provisions, the PSA is of the view that this could undermine the simplicity of the scheme, complicate implementation and open the scheme to protracted negotiations between state and federal government.

RECOMMENDATION

THAT THE PROPOSED PARENTAL LEAVE SCHEME BE IMPLEMENTED THROUGH COMMONWEALTH LEGISLATION.

The PSA submits that the proposed scheme should be paid at the adult minimum wage or at full income replacement whichever is higher.

We have been swayed by the Commission's argument that *replacement wages – sometimes the basis for paid leave scheme overseas – would provide weak incentives for lower income families to work, depending on the nature of welfare payments available to those out of the labour force*¹⁴ and welcome the Commission's proposal that the scheme provide a minimum wage to those workers who currently earn lower than the minimum wage (due to working less than full time hours).

We concur with the Commissions view that such a scheme *would create good incentives to work for lower income females, since the payment is significantly more than the value of income support for women working in the unpaid sector.*¹⁵

It is our position however that for parents earning more than adult minimum wage that full wage replacement needs to be provided so that families can adequately meet their

¹⁴ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Labour Market Impacts 5.17

¹⁵ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Labour Market Impacts 5.17

financial obligations and take an adequate period of leave around the birth of their child.

The PSA submits that it is also important that the scheme provide full wage replacement for those earning more than the minimum wage as the scheme sends a strong signal about the value of parenting.

It is also important from a gender equity perspective that paid parental leave be at full wage replacement for parents earning above the adult minimum wage as parental leave will be predominantly accessed by women.

We note that the Commission's approach *takes into account the balance between the needs of the parents and the burdens on taxpayers*¹⁶ and suggest that all stakeholders explore a method of delivering the gap between minimum wage and full wage replacement which does not place additional burdens on taxpayers.

We note that the Commission has considered many models that address who should finance the scheme including direct employer financing, employer top ups and pooled funding arrangements and have weighed the risks and complexities involved in each scheme.

Nevertheless we seek further exploration of how the scheme can deliver full wage replacement due to the significance of the issues outlined.

RECOMMENDATION

THAT PAID PARENTAL LEAVE BE PAID AT THE ADULT MINIMUM WAGE OR AT FULL INCOME REPLACEMENT WHICHEVER IS HIGHER.

The PSA submits that all workers regardless of age (juniors) or hourly rates should have the same entitlement to paid parental leave at either minimum wage or full wage replacement, whichever is higher.

The PSA acknowledges that there may be political sensitivities in relation to teenage pregnancy and is also desirous of a scheme that does not create unintended perverse consequences but contends that the majority of adolescents would not change their behaviour in relation to child bearing and raising based on the proposed paid parental leave scheme.

Furthermore as the scheme requires workforce attachment we suggest that even the limited period of workforce attachment that is required for eligibility would be beneficial to this constituency.

The PSA is also concerned that lower entitlements may be mandated for those on traineeships or others with hourly rates lower than the minimum wage as increasing

¹⁶ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, The Proposed Scheme 2.5

numbers of adults access retraining at different times of their employment lifecycle due to rapidly changing job markets.

Many workers access traineeships to gain entry into a different job market as their current job market may be tightening due to technological, legislative or (increasingly into the future) climate change. Many job markets are also highly impacted by global financial trends often forcing workers into other markets.

RECOMMENDATION

THAT THE PROPOSED PARENTAL LEAVE SCHEME PROVIDE THE SAME ENTITLEMENT TO ALL WORKERS REGARDLESS OF AGE OR HOURLY WAGES BELOW THE ADULT MINIMUM.

The PSA requests that the Commission do further modelling to ensure that Australians are not disadvantaged by the proposed parental scheme being taxed and included for assessment of any welfare benefits.

We raise this concern as the amount of tax payable on the payment could depend on which part of the financial year the scheme is accessed.

Access to welfare benefits may also be dependant on partner's income.

To safe guard against unintended detrimental effect the PSA submits that the proposed scheme should contain a no disadvantage clause.

RECOMMENDATION

THAT THE PROPOSED SCHEME CONTAIN A NO DISADVANTAGE CLAUSE TO ENSURE THAT AUSTRALIANS ARE NOT WORSE OFF AS A RESULT OF THE PROPOSED SCHEME BEING TAXED AND INCLUDED IN INCOME ASSESSMENT FOR WELFARE BENEFITS.

The PSA welcomes the multiple birth provision.

It is the PSA's position that superannuation should be calculated at the employee's actual wage and paid at existing rates and not capped at 9% of the adult minimum wage.

It is important from a gender equity perspective that employers be required to continue normal superannuation contributions as women will be the primary users of the scheme and women already have disproportionately lower amounts of superannuation savings. Capping of super for the period of the parental leave scheme would be a substantial disadvantage for women as it impacts of their long term ability to accumulate adequate superannuation.

We concur with the Commission estimations that *forgone female earnings [due to the impacts of child bearing and rearing] amount to an average of over \$300,000 in 2007*

*prices in a representative family with a single child*¹⁷ and that the forgone earnings has a marked impact on women's ability to finance their retirement. Currently on average, women receive a retirement payout of \$75,000 whereas as men receive on average \$155,000.¹⁸

The PSA contend that a government parental leave scheme should not exacerbate current women's ability to finance their retirement through capping of superannuation contributions.

Capping of superannuation also poses considerable compliance and administrative costs for employers and employees.

Employers would need to reconfigure their payroll systems to calculate and pay the capped amount which would be of considerable costs to many organisations as systems modifications and additional human resources may be required.

Employees will be disadvantaged by capping, not only due to the long term effect on their superannuation balances but because many superannuation funds require on-going normal contributions.

Many PSA members have their superannuation in the State Superannuation Scheme (SSS) which is a defined benefits scheme with approximately 24,000 members. The scheme mandates that members of the scheme and their employers continue paying their normal contributions during a period of paid maternity leave.

The rate of contribution is not set unlike more recent accumulation schemes and is greater than 9% and varies from member to member. Members are entitled to a defined benefit on retirement calculated on their exit salary.

Other PSA members have their superannuation in the State Authorities Superannuation Scheme (SASS) which is another defined benefit scheme with approximately 50,000 members. Most members in the SASS scheme are entitled to 18% employer contribution and make 6% of their own contribution with some member entitled to 21% employer contribution. The rates of contribution vary depending on the original scheme prior to amalgamation with SASS.

Like SSS, the SASS scheme requires that employers and employees continue to make their normal contributions during a period of paid maternity leave which is referred to as prescribed leave under the respective schemes.

There is scope for leave to be considered non-prescribed meaning that employer and employee contributions can be paused for up to 6 months however under non-prescribed leave employees need to meet both employer and employee contributions after 6 months.

¹⁷ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Labour Market Impacts 5.1

¹⁸ Herald Sun July 22, 2008 Meredith Booth

Under the Commissions recommendations to cap super employees will need to contribute both their normal contributions and the gap between the capped amount and their normal employer contributions to accumulate super under the prescribed leave provisions, which will place immediate financial strain on those employees.

Under the non-prescribed leave provisions employees would forego super contributions for up to 6 months impacting on their retirement incomes. Employees would then face additional financial strain as they would need to pay up to 27% of their normal salary in super contributions after 6 months. This would be a considerable amount of the Commission's proposed 18 weeks taxed minimum wage scheme.

As both schemes are defined benefit schemes there is also an added complication that there is no scope for accumulation of superannuation funds; therefore, the capped 9% superannuation contribution would need to be invested in another fund which allows for accumulation. Employees and employers would then face added administrative costs as they would be required to maintain 2 superannuation funds.

It is also the PSA's view that requiring that employers pay normal superannuation contributions is more equitable between employers as those employers who employ more highly paid employees will receive a proportionately higher employee retention benefit.

RECOMMENDATION

THAT EMPLOYER SUPERANNUATION CONTRIBUTIONS BE CALCULATED AT THE EMPLOYEES ACTUAL WAGE AND PAID AT EXISTING RATES AND NOT CAPPED AT 9% OF THE ADULT MINIMUM WAGE.

Draft Recommendation 2.2

The Australian Government should fund the cash component of the paid parental leave scheme, partially offsetting these costs by:

- removing eligibility for family tax benefit B while parents are on paid parental leave***
- replacing the baby bonus with another, differently focused payment as set out in draft recommendation 2.6.***

Employers should fund superannuation contributions during the paid parental and paternity leave period, but only under the conditions specified in draft recommendation 2.1.

The PSA supports the government payment proposed by the Commission but advocates for full wage replacement and employers to continue normal superannuation contributions as discussed previously in our submission.

Draft Recommendation 2.3

The employer should initially make payments to employees under the statutory parental leave scheme, with subsequent reimbursement by the Australian Government. However, an employer would only act as a paymaster for government where:

- an employee was also eligible for unpaid parental leave under the National Employment Standards and***
- a workable method for speedy reimbursement of that employer was feasible***
- the Commission's preferred approach is for employers that make at least monthly 'pay as you go' withholding payments to the Australian Taxation Office to receive reimbursement through those payments, with all other employers exempt from the obligation to act as a paymaster.***

The Australian Government should pay other eligible parents directly, preferably through a non-welfare agency.

The employers and their associations are better placed to comment on these recommendations. We support speedy reimbursements for employers to ensure that employees do not face unnecessary barriers when trying to access paid parental leave entitlements.

We also submit that increasing the Commission's 18 week wage payment to full income replacement and existing superannuation contribution levels reduces the administrative burden on employers as major changes will not need to be made to their payroll systems.

We also raise the issue for further consideration that an employee may be eligible for payment of parental leave through more than 1 employer as they meet the eligibility criteria with more than 1 employer. For instance, some university technicians have .5 positions (half time) with 2 institutions. In this instance some administrative mechanism would need to be available to specify which institution would act as paymaster. It will also be necessary to specify that superannuation contributions would need to be met by both institutions.

Draft Recommendation 2.4

The statutory paid parental leave scheme should be available for an employed parent (including the self-employed and contractors):

- who has worked an average of at least ten hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby, and***
- who is also the primary carer of their baby.***

We do not support this recommendation as it excludes individuals who are attached to the labour force but may work less than 10 hours per week, be seasonally or precariously attached or may have not yet returned from a previous period of parental leave.

The PSA submits that the 10 hour threshold is too high as it excludes workers who consistently work 1 day per week. Workers may have lifetime attachment to the labour force but may work 1 day per week over considerable periods of time to fulfil their child rearing responsibilities or while upgrading their skills.

The 10 hour threshold is of particular concern to the PSA as our members have the Right to Request part time work until their child is of school age. The Right to Request is complemented by a Right To Return (to their former position); hence workers may not meet the Commission's proposed eligibility criteria for attachment to the workforce, when in fact they have an on-going attachment.

We believe these workers should not be disadvantaged and submit that the threshold for labour force attachment should be reduced to 7 hours per week or 1 working day.

We further submit that the criteria should explicitly account for periods of leave. As previously stated in our submission 24.8% of workers (mainly casuals) have no leave entitlements and need to spend period away from the labour market for recreation, illness, family and community services, jury duty etc.

Workers who are forced to self finance their leave due to their employment status as workers without leave entitlements should not be further disadvantaged by being excluded from the proposed parental leave scheme.

The PSA submits that this is a poignant consideration as mothers often need to take leave prior to the birth of the child due to illness. This is recognised in most industrially negotiated parental leave entitlements which allow mothers to access maternity leave prior to the birth of the child. The PSA contends that a women's eligibility to the maternity leave scheme should not be compromised because of a period of illness prior to the birth of the child.

Periods of non-attachment to the workforce should also be discounted for seasonal workers or those in precarious employment (casuals) as periods between jobs characterise this growing part of our workforce.

The eligibility criteria that parents need to have a connection to the workforce in the immediate 12 months preceding the birth of the child also needs to be reconsidered as this criteria excludes many women who have a long term connection to the workforce but may be temporarily disconnected from the workforce as they are having a second or subsequent child.

Many families plan their children close together and parents may not have the opportunity to return from a period of parental leave for 12 months before proceeding on the next period of parental leave. This is especially the case for our members as

our members have the Right to Request an extension of a period of unpaid parental leave by a further 12 months to a total of 2 years. As with the Right To Request part time work, the Right to Request a further period of unpaid leave is complemented by the Right to Return securing ongoing employment.

Members have already contacted the PSA to advise that under the Commission's proposed eligibility criteria they would be ineligible for the paid parental leave regardless of long periods of previous workforce attachment and ongoing employment simply because their babies will be born too close together.

We believe eligibility criteria that exclude workers who have a genuine attachment to the labour force may produce a perverse outcome and act as a disincentive to maintain connection with the workforce.

RECOMMENDATION

THAT THE HOURS PER WEEK REQUIREMENT BE REDUCED TO 7 HOURS OR 1 WORKING DAY.

THAT THE CRITERIA EXPLICITLY RECOGNISE PERIOD OF LEAVE AND/OR NON-ATTACHMENT TO THE WORKFORCE FOR SEASONAL AND CASUAL WORKERS.

THAT THE CRITERIA BE MODIFIED FOR SECOND AND SUBSEQUENT CHILDREN TO RECOGNISE PERIODS OF EMPLOYMENT PRIOR TO THE BIRTH OF THE PREVIOUS CHILD OR CHILDREN IF THE CHILD OR CHILDREN ARE UNDER SCHOOL AGE.

Draft Recommendation 2.5

The paid parental leave scheme should give:

- ***eligible mothers the initial parental leave entitlement, but allow them to transfer the entitlement to eligible partners who take on the role of the primary carer***
- ***fathers (and other eligible partners) a two week period of exclusive paternity leave on a 'use it or lose it' basis, even if the mother was not eligible for statutory paid parental leave***
- ***fathers access to paid parental leave if the mother is not eligible, but only where (a) the fathers meet the employment and primary carer eligibility requirements and (b) there are special circumstances, which would be determined administratively.***

The PSA welcomes the recommendation that eligible mothers may transfer the entitlement of 18 weeks parental leave to eligible partners as it will allow the other parent to more fully share in parenting.

However we feel the restriction that there can only be one transfer between partners to be limiting and deny flexibility. More than one transfer of leave between partners

could become very important if the primary care giver becomes ill or cannot continue to provide care.

Shared (not concurrent) access to leave between partners would also facilitate quality care for the child and more equitable career opportunities between partners. For example if both partners were able to access 2.5 days leave per week both partners would be able to share in child rearing and maintain a connection with their careers.

We welcome the recommendation for paid paternity or other parent leave, but submit that the two week paternity/other parent leave for eligible partners should be increased to 4 weeks (at replacement wages plus full superannuation) to allow partners to have a more adequate time to bond with the baby and provide support for their partner.

We also submit that more flexibility should be afforded and that parental leave for eligible partners should be available 12 months from the birth or adoption of a child. This is particularly important for those workers with existing parental leave entitlements as the proposed 6 month limitation may exclude workers from accessing this leave. (see our submissions for Recommendation 2.7 for a more detailed analysis of the intersection between the proposed scheme and existing entitlements).

RECOMMENDATION

THAT THE TRANSFER AND SHARING OF LEAVE ARRANGEMENTS BE MADE MORE FLEXIBLE.

THAT FATHERS AND OTHER ELIGIBLE PARTNERS BE ENTITLED TO A PERIOD OF 4 WEEKS LEAVE.

THAT PATERNITY OR OTHER PARENT LEAVE BE AVAILABLE 12 MONTHS FROM THE BIRTH OR ADOPTION OF A CHILD.

Draft Recommendation 2.6

The existing baby bonus should be replaced with an equivalently-valued, non income tested maternity allowance, payable only to those parents not using statutory paid parental leave (with the exception of multiple births as set out in draft recommendation 2.1).

However, where a parent takes a shortened period of paid parental leave whose value is less than the maternity allowance, the parent would be entitled to a payment equal to the difference.

The PSA welcomes financial support for women who are not in the workforce.

The PSA submits that the assistance should be through the welfare systems and distinct from the industrial entitlement of paid parental leave as previously discussed in our submission under Objective 3.

The ability to opt out of the paid parental scheme and receive the maternity allowance needs further review and safe guards should be in place to ensure that women who do so are not in any way disadvantaged. We raise this issue as the intersection between the taxed parental leave scheme, the untaxed maternity allowance and welfare entitlements may be particularly complex.

More administrative detail of how parents may opt out is also needed.

RECOMMENDATION

THAT THE SCHEME HAVE A NO DISADVANTAGE CLAUSE TO PROTECT PARENTS WHO OPT OUT OF THE PAID PARENTAL LEAVE SCHEME.

Draft Recommendation 2.7

The statutory paid parental leave scheme should provide a total of 18 weeks of paid leave for parents of a newborn child who meet the employment test, including:

- a requirement that (a) the period of leave must commence at birth, or after a period of other continuous leave that commences at the birth of the child; (b) must be commenced within six months of birth; (c) leave must be taken in one block; (d) only one transfer of paid parental leave between parents would be permitted and (e) there be no concurrent use of paid parental leave by parents***
- mothers of a stillborn baby, where the baby meets the requirement for birth registration***
- parents of non-familial adoptions, regardless of the child's age, from the time of placement***
- custodians of surrogate children, but subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions, (with provision for 12 weeks of paid parental leave to the surrogate mother).***

Parents could take any paid parental leave remaining if their baby died.

Any outstanding leave could be transferred to the partner if the primary carer died.

Paternity leave could be taken concurrently with the mother's paid parental leave but would have to be taken within six months of the birth of the child.

While we welcome the draft recommendation of 18 weeks any paid parental scheme should allow for 28 weeks to reflect the optimum time a parent needs off work to care for a new child. As recognised by the Commission this is in the best interest of both the mother and the child.

The restrictions of the proposed 18 week entitlement pose a number of different problems that will need to be resolved in the final recommendations, which are:

After the birth of the child;

Women may need to access the scheme prior to the birth of the child due to the physical impacts of pregnancy. A period pre-natal leave may be in the best interests of the mother and child.

This is explicitly recognised in most industrially negotiated schemes which allow for access to maternity leave prior to the birth of the child. For example PSA members covered Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 can access paid maternity leave 9 weeks prior to the expected date of birth of the child.

We note that it is the Commission's view that *While the Commission acknowledges that many women need some prenatal leave, women are able to use sick leave where there is a medical need and the prenatal period is also covered by several existing statutory provisions.*¹⁹

However as previously explored in our submission 24.8% of employees do not have access to paid leave entitlements. As such the PSA submits that it is important that women be able to access a period of prenatal leave.

after a period of other continuous leave that commences at the birth of the child; (b) must be commenced within six months of birth

The PSA does not support this requirement as it would disqualify many of our members from accessing the scheme.

Many of our members who are "general staff" in the University sector have in excess of 26 weeks paid parental leave under their Enterprise Bargaining Agreement with 26 weeks being the minimum entitlement in this sector. Under the Commissions eligibility criteria they would be ineligible for the proposed parental leave scheme and the proposed maternity payment. This would disadvantage our members by \$9,788.04 (current minimum wage x 18 weeks).

Most PSA members have an entitlement to 14 weeks paid maternity leave under the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 which allows them to access the leave at half pay. The Commission's proposed eligibility criteria would disqualify members who accessed their leave at half pay from the proposed parental leave scheme again disadvantaging these members by up to \$9,788.04 (current minimum wage x 18 weeks).

We note that members could modify their access to leave entitlements to ensure eligibility for the proposed scheme by either taking a longer period of prenatal leave or forgoing access to leave at half pay but this may disadvantage our members financially due to tax implications or may lead to perverse consequences such as members taking a greater period of prenatal leave than necessary.

¹⁹ Productivity Commission 2008, *Paid Parental Leave: Support for Parents with Newborn Children, Draft Inquiry Report, Canberra*, Overview xx

Members who accessed prenatal leave to comply with the proposed eligibility requirements would also face the risk that their baby may be born earlier than expected again disqualifying them from the scheme.

To ensure that the scheme can be accessed by our members the PSA submits that the government funded leave should be available to a parent at a time of their choosing within a 12 month period and not necessarily after a *period of other continuous leave*.

The PSA is also very concerned that the Commission has not specified that *other continuous leave* is limited to parental leave entitlements as this may be interpreted to mean that employees would need to exhaust all leave entitlement including recreation and long service leave to be eligible for the parental leave scheme. If this were the case this would severely compromise new parents ability to care for their child after a parental leave (for example during school holidays) as they would have depleted all leave entitlements.

Even if it were specified that *other continuous leave* is limited to parental leave the PSA submits that such a requirement may complicate our ability to negotiate top up payments with employers as a top up payment would be considered leave under current industrial legislation.

The PSA notes from discussions with the Commission that this requirement may have been conceived to protect existing industrially negotiated entitlements as it implies that current entitlements would continue however the PSA submits that a no disadvantage clause as recommended in our submission under Objective 1 would better serve this objective.

The PSA notes that the Commission has recommended that the leave be accessed within 6 months of the birth of the child to promote health and well being objectives; however we submit that the proposed leave be available within the first 12 months to ensure that parents do not modify their behaviour in accessing current leave entitlements.

(c) leave must be taken in one block; (d) only one transfer of paid parental leave between parents would be permitted and

As submitted under Recommendation 2.5 the PSA recommends that transfer and sharing of leave arrangements be made more flexible.

The PSA supports the rest of this recommendation but contends that access to paternity leave should not be limited to a 6 month period for the same reasons we have outlined in relation to the intersection between the proposed scheme and current entitlements for mothers.

RECOMMENDATION

THAT THE PROPOSED SCHEME ALLOWS ACCESS TO THE PARENTAL LEAVE PAYMENT PRIOR TO THE BIRTH OF CHILD WHEN IT IS IN THE BEST INTERESTS OF THE MOTHER OR CHILD.

THAT THE ELIGIBILITY CRITERIA THAT THE PROPOSED PARENTAL LEAVE SCHEME ONLY BE AVAILABLE AFTER A PERIOD OF OTHER CONTINUOUS LEAVE THAT COMMENCES AT THE BIRTH OF THE CHILD; (B) MUST BE COMMENCED WITHIN SIX MONTHS OF BIRTH BE REMOVED.

THAT PARENTAL LEAVE BE AVAILABLE 12 MONTHS FROM THE BIRTH OR ADOPTION OF A CHILD.

THAT THE PROPOSED PARENTAL LEAVE SCHEME INCLUDE A NO DISADVANTAGE TEST TO PROTECT CURRENT ENTITLEMENTS.

THAT THE TRANSFER AND SHARING OF LEAVE ARRANGEMENTS BE MADE MORE FLEXIBLE.

Draft Recommendation 2.8

When the National Employment Standards are next subject to revision, the Australian Government should amend:

- section 21 to require an employee on parental leave to provide six weeks notice for an extension to leave, unless an employer agrees to a shorter period***
- section 15 to provide job return guarantees to adoptive parents' equivalent to natural parents.***

The PSA supports this recommendation as adoptive parents should be treated equally with other parents have the same job return guarantees.

We also support appropriate notice being provided.

Draft Recommendation 2.9

In addition to publicly provided information on the workings of a statutory paid leave scheme, the Australian Government should provide:

- evidence-based advice to employers on how to reduce the disruption burdens associated with increased average durations away from work by carers, with this information especially directed at small business***
- a web-based calculator that shows which employees would be eligible and sets out any obligations by employers.***

We support this recommendation as we believe it is important that employers are aware of their obligations under the proposed scheme and the government should provide education and resources to employers to ensure that employers and employees are aware of their entitlements and that access to the scheme remains as simple and straightforward as possible.

Draft Recommendation 2.10

A paid parental leave scheme should include:

- ***a 'keeping in touch' provision that — subject to employer and employee consent — allows the employee to work up to 10 days while on paid parental leave, where that work strengthens the connection to their workplace***
- ***scope for eligible self-employed parents to maintain some oversight of their businesses while on leave.***

It is important that women maintain their connection to their work, colleagues and employer to ensure a smooth transition back to their job following the end of their paid parental leave.

The 'keeping in touch' provision is a great initiative to keep women connected to the workplace but the draft recommendation does not consider the following key details:

1. Any days worked must extend the time away from work.

It is important that women can access the full scheme leave entitlements and if keeping connected to the workforce takes away from this, it acts as a great disincentive for women to maintain contact with their employer.

2. Any days worked must be paid at full wages plus superannuation and other entitlements should accrue as with any other working day.

If women are returning to work for up to 10 days, they should be remunerated accordingly. As the proposed scheme is at minimum wage and many women earn above this they should not be expected to work for less money and no accrual of benefits.

The extra costs of returning to work for up to 10 days during the paid parental leave scheme, such as childcare and transport, should be considered in this recommendation and access to support and benefits be enabled.

3. Keeping in touch must be voluntary.

For some women it may not be necessary or viable for them to work any days while on leave and decision to keep connected to work by coming in for several days must be up to the discretion of the individual parent. It is important that the scheme specify

that any parent who does not utilise the Keeping In Touch Provision should face no disadvantage or repercussion.

RECOMMENDATIONS

THAT THE KEEPING IN TOUCH PROVISION SHOULD SPECIFY THAT ANY DAYS WORKED EXTEND THE PERIOD OF THE PAID PARENTAL LEAVE SCHEME.

THAT THE KEEPING IN TOUCH PROVISION SHOULD SPECIFY THAT ANY DAYS WORKED BE PAID AT ORDINARY WAGES WITH NORMAL SUPERANNUATION PAYMENTS AND SHOULD BE COUNTED AS SERVICE FOR ACCRUAL OF ENTITLEMENTS.

THAT THE KEEPING IN TOUCH PROVISION SHOULD ENABLE THE EXTRA COSTS OF RETURNING TO WORK FOR THE PERIOD TO BE RECOUPED BY THE EMPLOYEE.

THAT THE KEEPING IN TOUCH PROVISION SHOULD SPECIFY THAT THE PROVISION IS VOLUNTARY - AT THE CHOICE OF THE EMPLOYEE.

THAT THE KEEPING IN TOUCH PROVISION SHOULD SPECIFY EMPLOYEES WILL NOT BE DISADVANTAGED FOR NOT UTILISING THE PROVISION.

Draft Recommendation 2.11

The Australian Government should provide more resources to allow effective support for breastfeeding during the first six months of an infant's life, with a focus on the post-initiation stage.

Breastfeeding has significant health benefits to the infant and should be supported by the government and by employers. The proposed scheme of 18 weeks leave allows that women will return to work during the first six months of their child's life; therefore, adequate support needs to be provided.

The government needs to provide better support for breastfeeding not only to the mothers through access to support and resources, but to employers as well to ensure that women can continue to breastfeed following their return to work.

There must be a requirement that employers provide adequate facilities and time for women who return to work while still breastfeeding to continue to do so and feel comfortable in their workplace.

RECOMMENDATION

THAT EMPLOYERS BE REQUIRED TO PROVIDE BREAST FEEDING FACILITIES.

Draft Recommendation 2.12

The Australian Government should undertake:

- ***ongoing assessments of the interaction of the paid parental leave scheme with the tax and welfare system***
- ***an evaluation of the administrative aspects of the scheme two years into its life***
- ***a comprehensive evaluation of the impacts of the scheme five years into its life***

The PSA supports this recommendation as it is important to assess and evaluate all aspects of the scheme to ensure that parents are receiving the support they need and that the scheme is being appropriately administered by employers and the government.

In addition to the draft recommendations for an *evaluation of the administrative aspects of the scheme two years into its life*, we submit that the scheme must include a comprehensive evaluation of the impacts of the scheme including a review of the level of entitlements provided by the scheme.

As submitted previously we believe that the longer term objective of the scheme should be to ensure of ensuring that working parents have six months parental leave which should be structured like any other leave arrangement and should be at full income replacement, attract normal superannuation contributions, be counted as service for the accrual of other industrial entitlements and have equivalent compliance and dispute resolution mechanisms.

The Productivity Commission in its report acknowledged the benefits of at least six months leave and this should be the ultimate focus of any paid parental leave scheme and subsequent reviews.

The PSA submits that in addition to the review of the industrial entitlement of paid parental leave, a separate review must be done for those receiving the maternity payment. It is important that the difference between the two payments be acknowledged and the different administrative and other affects be thoroughly evaluated and reviewed.

RECOMMENDATION

THAT A COMPREHENSIVE REVIEW OF THE SCHEME BE UNDERTAKEN WITHIN 2 YEARS WITH A VIEW TO ENSURING THAT WORKING PARENTS HAVE ACCESS TO 6 MONTHS LEAVE AT FULL WAGE REPLACEMENT.